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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

Debtor.

Case No. BK-S-06-10725-LBR

Chapter 11

**DECLARATION OF GEOFFREY L.
BERMAN IN SUPPORT OF
OMNIBUS OBJECTION OF USACM
TRUST TO PROOFS OF CLAIM
BASED UPON INVESTMENT IN
THE BROOKMERE MATTESON
LOAN**

**Date of Hearing: August 30, 2011
Time of Hearing: 10:30 a.m.
Estimated Time for hearing: 10 min.**

Geoffrey L. Berman declares under penalty of perjury:

1. I am an adult person competent to testify in court.
2. I make this declaration based upon my personal knowledge, and upon the records USA Commercial Mortgage Company.
3. I am the Trustee of the USACM Liquidating Trust ("USACM Trust"), which is an entity created by the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization ("Plan"), in the jointly-administered bankruptcy cases, In re USA Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States Bankruptcy Court for the District of Nevada.
4. USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding for an acquisition and development loan to borrowers identified as "Brookmere

1 Matteson, LLC” and “Lord & Essex Matteson, LLC.” A copy of the Offer Sheet is
2 attached hereto as **Exhibit B** and incorporated by this reference. The total loan amount
3 proposed was \$27,050,000. The Offer Sheet described the investment as a “First Trust
4 Deed Investment” and noted that the investment would be secured by a first deed of trust
5 on 156 acres to be developed into: finished single-family lots, single-family lots with
6 grading and off-site improvements completed, and acreage devoted to commercial/retail
7 property to be completed with infrastructure. The project was located at the Highway 57
8 and Vollmer Road in Matteson, Illinois. The loan was intended to “retire existing debt on
9 the property and provide for the backbone infrastructure of the property, as well as the
10 completion of 334 residential lots.”

11 5. On October 29, 2003, Borrower made and delivered to various lenders,
12 including the Direct Lenders identified in **Exhibit A**, a “Promissory Note” (the “Note”)
13 and a Construction Loan Agreement. The Note and Loan Agreement provided for a loan
14 of \$27,050,000. *Id.* The Loan Agreement was subsequently modified to allow Borrower
15 to place a junior mortgage on the property. *Id.* The Note was secured by (a) two
16 “Assignment of Rents and Leases,” one from Brookmere, LLC and one from Essex
17 Matteson, LLC, each in favor of the Direct Lenders, granting the Direct Lenders a
18 secured interest in the Borrowers’ interest in any lease, or sublease, (b) two “Mortgage,
19 Assignment of Rents and Security Agreements,” one from Brookmere, LLC and one from
20 Essex Matteson, LLC, each in favor of Direct Lenders, which were each recorded in the
21 official records of Cook County, Illinois on November 7, 2003, and (c) Security
22 Agreements in favor the Direct Lenders providing a first priority security interest in all of
23 the Borrowers’ collective interest in their personal property, accounts, and other personal
24 assets. *Id.* The Note was also supported by Guaranties signed by Christopher Smith and
25 John Popp, as well as a Completion Guaranty signed by Christopher Smith and John
26 Popp, who, pursuant to the Offer Sheet, “indicate a combined net worth in excess of \$20

1 million.” Christopher Smith and John Popp appear to have provided USACM personal
2 financial statements in support of their indicated combined net worth.

3 6. The USACM “Loan Summary” dated July 31, 2006 and filed in this case
4 shows that Borrower was “Non-performing” on the Note as of July 31, 2006. During this
5 bankruptcy case through the transfer of servicing to Compass, USACM treated the Direct
6 Lenders with respect to any interim payments by the borrower in accordance with this
7 Court’s orders and the confirmed Plan.

8 7. Counsel for the Trustee had a brief conversation with counsel for Tom
9 Grimmett regarding the status of the Brookmere Matteson Loan. According to the
10 receiver’s counsel, the Direct Lenders continue to have an interest in the collateral,
11 although the full extent of that interest is currently subject to an Illinois appeal of a trial
12 verdict regarding the validity of certain releases granted after a refinancing of the
13 Brookmere Matteson Loan by Botaba Realty Company, Ltd. *See Botaba Realty*
14 *Company, Ltd. v. Harris Bank Joliet, N.A., as Trustee under a Trust Agreement dated*
15 *September 17, 2002 and known as Trust Number HTJ8067, et al.*, Appellate Court of
16 Illinois, Case Nos. 11-1379 and 11-1380. Moreover, the Direct Lenders received a partial
17 pay down of the amounts owed to them upon that refinancing.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Dated: July 19, 2011

20 /s/ Geoffrey L. Berman

21 Geoffrey L. Berman

22 Copy of the foregoing (without exhibits)
23 Mailed by First Class postage prepaid
24 U.S. Mail on July 19, 2011 to the
25 Investors listed on Exhibit A.

26 /s/ Matt Burns

Matt Burns
Lewis and Roca LLP